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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/633,270	08/01/2003	Robert E. Simmons JR.	SIMMONS - 001XX	3369

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EXAMINER

LAYNO, BENJAMIN

ART UNIT	PAPER NUMBER
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3712

DATE MAILED: 03/05/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/633,270

Applicant(s)

SIMMONS, ROBERT E.

Examiner

Benjamin H. Layno

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-24 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-24 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. ____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date ____. | 6) <input type="checkbox"/> Other: ____. |

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

2. Claim 1 is rejected under 35 U.S.C. 102(e) as being anticipated by Addabbo.

The patent to Addabbo discloses a deck rock, paper, scissor playing cards. The deck comprises fifty-two playing cards having three groups. The three groups include a plurality of wild cards (High Cards or Lava Cards), Fig. 1 the bottom card, and see column 4, line 54, a plurality of scoring cards having rock, paper, or scissor illustration thereon, Fig. 1 the nine cards at the top three rows, and see column 4, lines 33-44, and a plurality of non-scoring cards (Face Cards: Robots, Time Machines and UFO's), Fig. 1 the three cards in fourth row, and see column 4, lines 45-51. All three groups of cards have point values thereon, see Table 1 and see Sample Hands, columns 6-8.

The only difference between the visual representations on Addabbo's cards (e.g. "Lava", "Robots", "Time Machines", "UFO's"), and the visual representations (e.g. "little sister", "little brother", "broken rock", "crumpled paper", "broken scissor") in claim 1 of the present invention resides in the meaning and information conveyed by **printed**

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matter. Such differences are considered unpatentable, *Ex parte Breslow*, 192 USPQ 431.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 2-5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Addabbo.

In regard to claim 2, Addabbo's cards include four wild cards, twelve rock cards, twelve paper cards, twelve scissor cards and twelve non-scoring cards. Determining exactly how many cards are to be in each group is simply a manufacturing design choice which is always obvious in the art.

Concerning claim 3, determining exactly what point values to assign to each of Addabbo's cards relates to game rules and the method of play. In game apparatus claims, only the claimed elements having physical structure, (e.g. fifty-two cards, three groups of cards, etc.) are given patentable weight. Game rules, (e.g. point values to assign to cards), however, have no physical structure per se. Thus, game rules have no limiting affect in game apparatus claims.

In regard to claims 4 and 5, see the *Ex Parte Breslow* above. Furthermore or in the alternative, Addabbo's rock, paper, scissor playing cards disclose the claimed invention except for the historical geographical landmarks, historical documents and the

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cutting devices set forth in claims 4 and 5. It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the visual representations on Addabbo's rock, paper, scissor playing cards since it would only depend on the intended use of the assembly and the desired information to be displayed. Further, it has been held that when the claimed printed matter is not functionally related to the substrate, it will not distinguish the invention from the prior art in terms of patentability. *In re Gulack*, 217 USPQ 401, (CAFC 1983). The fact that the content of the printed matter placed on the substrate (e.g. playing card surface) may render the device more convenient by providing an individual with a specific type of visual representation does not alter the functional relationship. Mere support by the substrate (e.g. playing card surface) for the printed matter is not the kind of functional relationship necessary for patentability. Thus, there is no novel or unobvious functional relationship between the printed matter (e.g. historical geographical landmarks, historical documents and the cutting devices) and the substrate e.g. (playing card surface) which is required for patentability.

5. Claims 6-24 rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over War.

The publication "The Way To Play" discloses the well known card game War. The card game War disclose many of the steps recited in claims 6-24. The only step recited in claims 6-24 which the card game War lacks is the printed matter on the cards recited in the first two paragraphs of claims 6, 12 and 18. Printed matter is considered unpatentable, see *Ex parte Breslow* and *In re Gulack* above.

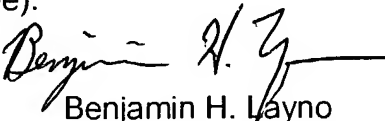
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6. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The patents to Edwards, Jr., Wu and Meier disclose playing cards having rock, paper, scissor indicia thereon. The patent to Vennor discloses a board game comprising cards having rock, paper, scissor indicia thereon. The patent to Van Gass discloses a card game wherein the playing cards have different symbols, and the symbols are identified as rock, paper, scissor.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Benjamin H. Layno whose telephone number is (703) 308-1815. The examiner can normally be reached on Monday-Friday, 1st Friday Off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Derris Banks can be reached on (703) 308-1745. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Benjamin H. Layno
Primary Examiner
Art Unit 3712

bhl